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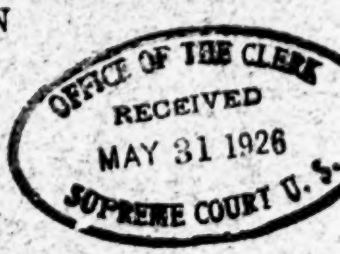
In the Supreme Court of the United States

ORIGINAL JURISDICTION

OCTOBER TERM, 1925



STATE OF WISCONSIN, STATE OF OHIO, STATE OF PENNSYLVANIA AND STATE OF MINNESOTA,
Complainants,

v.

STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO,
Defendants,

STATE OF MISSOURI, STATE OF TENNESSEE, STATE OF KENTUCKY AND STATE OF LOUISIANA,
Intervening Defendants.

Bill in Equity
Original Jurisdiction

[redacted] 7

OFFICIAL NEWSPAPER RELEASES

Covering Correspondence between
THE DEPARTMENT OF STATE AND
THE BRITISH EMBASSY
In Regard to the Subject Matter of the Within Suit

Printed by Complainants for the Use of
THE SUPREME COURT OF THE UNITED STATES
In the above entitled cause.

In the Supreme Court of the United States

ORIGINAL JURISDICTION

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Bill in Equity
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DEPARTMENT OF STATE

FOR THE PRESS

Canada

February 24, 1926.

CONFIDENTIAL RELEASE FOR PUBLICATION IN NEWSPAPERS APPEARING ON THE STREETS AFTER 3:00 O'CLOCK, EASTERN STANDARD TIME, WEDNESDAY, FEBRUARY 24TH, 1926, AND NOT TO BE PREVIOUSLY QUOTED, PUBLISHED, OR USED IN ANY WAY.

Through an arrangement between the Department of State and the British Embassy for simultaneous publication in the United States and Canada, the following correspondence in regard to the diversion of water from Lake Michigan by the Sanitary District of Chicago is made available to the press:

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"Department of State,
Washington,
April 2, 1924.

"His Excellency
The Right Honorable
Sir Esme Howard, G. C. M. G., K. C. B., C. V. O.,
Ambassador of Great Britain.

"Excellency:

"Further reference is made to the note from your Embassy No. 130 of February 9, 1924, in which it was stated that the Government of the Dominion of Canada

desired to send Mr. W. J. Stewart, Chief Hydrographer of the Dominion Government to be present in its behalf at hearings of a special committee of the Senate appointed to investigate the problem of a nine foot channel in the proposed waterway from the Great Lakes to the Gulf of Mexico, and to the inquiry made in your note No. 256 of March 21, 1924, in regard to the date on which these hearings will be held, and whether Mr. Stewart will be at liberty to be present.

"The Committee of the Senate to which reference was made in the Embassy's note of February 9, 1924, has not held hearings during the present session of Congress or yet arranged to hold them.

"I am informed by the Chairman of the Committee on Rivers and Harbors of the House of Representatives that this Committee has arranged to resume hearings on April 15, on bills dealing with the diversion of waters from Lake Michigan, the most important one, I understand, being known as the Hull Bill (H. R. 5475). The Committee desires to obtain all the information it can which will be helpful towards a correct determination of the matters which it has under consideration. It will welcome the help of all who have information of value relating to these matters, and will be glad to have Mr. Stewart attend the hearings.

"Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) CHARLES E. HUGHES."

"British Embassy,
Washington, D. C.,
June 13, 1924.

"The Honourable Charles E. Hughes,
Secretary of State of the United States,
Washington, D. C.

"Sir:

"I have the honour to refer to my note No. 256 of the 21st of March and to other correspondence on the subject of the diversion of water from the Great Lakes as a result of the Chicago drainage system, and at the request of His Excellency the Governor General of Canada to call your attention to the fact that this matter has come up for discussion in the Canadian Parliament on several different occasions during the current session.

"On each occasion, and with increasing emphasis amounting to unanimity, demands have been made upon the Dominion Government to renew the protests which have already been lodged against the action of the Sanitary District of Chicago, in continuing and seeking to extend their claim to diversion of water from the St. Lawrence Watershed into that of the Mississippi, with consequent adverse effect upon important interests in the navigation both of the Great Lakes and of the St. Lawrence River, and the development of power, actual and prospective, upon the River itself and upon the waters connecting the Lakes.

"The Dominion Government are constrained to believe that unless some reassuring message can be made to the people of Canada that favorable progress is being made in the matter, public opinion throughout the Dominion will become so aroused as to render exceedingly difficult the amicable consideration and discussion of the far less-reaching problem and issue incident to the Great Lakes

and the International Waterway. The Government of Canada are fully aware that in many parts of the United States public opinion is similarly being aroused, and are not ignorant of the fact that the United States Government is not less anxious than they are to see a settlement speedily effected.

"It is for these reasons, therefore, while unwilling to prefer any request or take any steps which might add to the existing embarrassment, the Dominion Government feel that they must once again direct the attention of the United States Government to the serious situation, which has developed, and in doing so express the hope that it may be possible now to obtain an expression of the views of the United States Government on the points raised in my note of March 21st. The Government of Canada feel that it would be most advantageous for them to obtain a statement from the competent United States authorities which will definitely define the position as it now stands, and they trust that such a statement will be of a reassuring character as to probable future developments.

"In bringing these facts to your notice, I venture to hope that I may receive an expression of the views of the United States Government at your earliest convenience for communication to the Dominion Government.

"In this connection I would add that the Dominion Government propose to publish forthwith the note No. 256 which I addressed to you on March 21st.

"I have the honour to be
with the highest consideration,
Sir,
your most obedient,
humble servant,
(For the Ambassador)
(Signed) HERBERT W. BROOKS."

"Department of State,
Washington,
June 28, 1924.

"His Excellency
The Right Honorable
Sir Esme Howard, G. C. M. G., K. C. B., C. V. O.,
Ambassador of Great Britain.

"Excellency:

"I have the honor to acknowledge the receipt of your Note No. 533 of June 13, 1924, in further reference to the diversion of water from Lake Michigan at Chicago.

"In previous correspondence in regard to this matter reference was made to the suit brought by this Government to restrain the Sanitary District of Chicago from diverting a larger quantity of water from Lake Michigan than is authorized by the permit issued to the Sanitary District by the Secretary of War and to bills introduced in Congress during the past session with reference to the construction of the proposed waterway from Lake Michigan to the Mississippi River and the sewage disposal system of Chicago.

"The suit for an injunction, which is now pending on appeal in the Supreme Court of the United States, has been assigned for argument on November 10, 1924, early in the next term of the court. The position of the United States as plaintiff in this litigation is evidence of the interest which this Government has in the preservation of the navigability of the Great Lakes system of waterways. Until the Court has rendered an opinion in the case this Department will not be in a position to furnish the Canadian Government with further information in regard to the views of this Government concerning the question involved in the litigation.

"Hearings were held in March, April and May, 1924, by the Committee on Rivers and Harbors of the House of Representatives on the several bills introduced in Congress. In order that the Committee might be fully informed of the views of the Canadian Government in regard to the diversion of water from Lake Michigan I sent copies of your notes of February 13, 1924, and March 21, 1924, to the Chairman of the Committee. I have also sent him a copy of your note of June 13, 1924. In my note of April 2, 1924, I informed you that the Committee would be glad to have Mr. W. J. Stewart, Chief Hydrographer of the Canadian Government attend the hearings. The bills were still before the Committee on the adjournment of the session of Congress on June 7, 1924.

"I regret that the formulation of a comprehensive statement of the views of this Government concerning the diversion of water from Lake Michigan will have to be deferred for a time because certain of the questions involved are under consideration by Congress and the Supreme Court both of which are at the present time in recess. This Government is prepared, however, to include consideration of the diversions of water from Lake Michigan among the questions to be referred by the United States and Canada to the Joint Board of Engineers appointed for the further investigation of the proposed Saint Lawrence Waterway, as will be fully explained in my note in regard to the instructions to be given to the engineers. It would be understood, of course that the submission of this question to the Joint Board of Engineers would be without prejudice to the rights of this Government with reference to the diversion of water from Lake Michigan or the position which it may take concerning questions that may arise because of such diversions.

"In connection with the statement made in your note under acknowledgment that it is the purpose of the Canadian Government to publish forthwith your note No. 256 of March 21, 1924, I invite your attention to the release of my note of April 2, 1924, given in my note of April 9, 1924.

"Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) CHARLES E. HUGHES."

"Department of State,
Washington,
February 13, 1925.

"His Excellency
The Right Honorable
Sir Esme Howard, G. C. M. G., K. C. B., C. V. O.,
Ambassador of Great Britain.

"Excellency:

"I have the honor to transmit herewith for your information a copy of a notice of a hearing which will be held in the office of the Secretary of War on February 20, 1925, on an application made by the Sanitary District of Chicago for a permit to divert an annual average of ten thousand cubic feet of water per second from Lake Michigan.

"Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) JOSEPH C. GREW
Acting Secretary of State."

"Enclosure:
Notice, February 10, 1925."

ENCLOSURE

"NOTICE

"February 10, 1925.

"The Secretary of War will hold a hearing in his office at eleven A. M., February 20, 1925, on an application made by the Sanitary District of Chicago on January 31, 1925, for a permit to divert an annual average of 10,000 cubic feet per second of water from Lake Michigan.

"He now has under consideration the question of issuing a permit, covering a period of five years, to the Sanitary District, to divert from Lake Michigan, through its main drainage canal and auxiliary channels, an amount of water not to exceed an annual average of 8,500 cubic feet per second, with an instantaneous maximum not to exceed 11,000 cubic feet per second—the permit to be made conditional upon the following:

(1) The Sanitary District of Chicago shall submit for approval and carry out a program of sewage treatment by artificial processes which will provide the equivalent of the complete (100%) treatment of the sewage of a human population of 1,200,000 before the expiration of the permit, proper credit to be given for all completed portions of projects which are a part of its sewage treatment program.

(2) The Sanitary District shall pay its share of the cost of such regulating or compensating works to restore the levels or compensate for the lowering of the Great Lakes, if and when constructed, and post a guarantee in the way of a bond or certified check in the amount of $1,000,000 as an evidence of its good faith in this matter.

(3) The execution of the sewage treatment program and the diversion of water from Lake Michigan shall be under the supervision of the U. S. District

Engineer at Chicago, and the diversion of water from Lake Michigan shall be under his direct control in times of flood on the Illinois and Des Plaines Rivers.

(4) If, within six months after the issuance of this permit, the City of Chicago does not adopt a program for metering at least ninety per cent of its water service and provide for the execution of said program at the average rate of ten per cent per annum thereafter, this permit may be revoked without notice.

The Secretary desires that the discussion at the hearing be limited strictly to the matter contained in the application for the permit, that is, the amount of water to be granted to Chicago and the conditions upon which the issuance of a permit should be contingent.

As the time which can be given each side for the hearings is limited, it is desired that the number of speakers be limited to as few as practicable, and it is hoped that the proponents and opponents of the application will select their speakers with this object in view."

On February 17, 1925, a member of the staff of the British Embassy had informal conversations with officials of the State Department and as a result arrangements were agreed upon for representatives of Canada to attend the hearings to be held by the Secretary of War beginning on February 20 and for the views of the Dominion Marine Association to be expressed thereat. On this occasion the State Department officials concerned drew special attention to the limitation upon discussion at the hearings as stated in the penultimate paragraph of the War Department's notice enclosed in the note of February 13 from the Secretary of State to the British Ambassador.

"British Embassy,
Washington,
February 24th, 1925.

"The Honourable
Charles E. Hughes,
Secretary of State of the United States,
Washington, D. C.

"Sir:

"I have the honour to refer to your note of the 13th instant, and to inform you that the Government of Canada have observed that public hearings have recently been held by the War Department in Washington on an application made by the Sanitary District of Chicago for permission to increase the quantity of water which that District is now permitted to divert from Lake Michigan under authority of the Secretary of War and that the question whether, in accordance with the recommendation of the Chief Engineer, the amount permitted to be diverted should, under certain conditions, be increased to 8,500 cubic feet per second instead of 4,167 cubic feet per second, to which the Sanitary District is limited under a recent judgment of the Supreme Court of the United States, was also considered.

"The Dominion Government now desire me to state that, while they would not wish to oppose any interim measure which may be necessary to protect the health of the inhabitants of the city of Chicago, they feel compelled to reiterate the protest they have already made against the abstraction of water from the St. Lawrence basin and, in order that there may be no misunderstanding, I desire to take this opportunity of making it clear that the Government of Canada do not surrender any claims that might

be put forward for consequential losses already suffered or which may possibly be suffered in the future on this account. The Dominion Government are of opinion that it is impossible to lose sight of the fact that the effect of the present increase in permitted diversion of water will be to postpone the relief for which the navigation and other interests injuriously affected by the attitude of the Chicago Sanitary District have been waiting already too long, and which, subject only to the paramount necessity of safeguarding public health, these interests are now entitled to receive.

"I feel sure that you will readily appreciate that the injury to Canadian interests by any lowering of the natural level of the Great Lakes connecting waters and the St. Lawrence River by the diminution of their natural water supply is of constantly increasing importance not only on account of navigation on the Great Lakes and lower St. Lawrence River but also on account of power development. The Government of Canada have not failed to recognize that United States interests are likewise substantially affected by this question.

"The Government of Canada feel confident that the Government of the United States is fully alive to the advisability of restricting within the narrowest possible limit the amount of water to be diverted from Lake Michigan for use by the Sanitary District of Chicago, and in this connection, they feel certain that no permit will be granted for the diversion of any water not essential to safeguarding the health of the population of that city, and, further, that the period during which such diversion must on this account continue, will be made as short as circumstances permit.

"I should be most grateful if you would be so good as to communicate the contents of this note to the interested authorities of the United States Government.

"I have the honour to be,
with the highest consideration,
Sir,
Your most obedient,
humble servant,

(Signed) ESME HOWARD."

"Department of State,
Washington,
February 26, 1925.

"His Excellency
The Right Honorable
Sir Esme Howard, G. C. M. G., K. C. B., C. V. O.,
Ambassador of Great Britain.

"Excellency:

"I have the honor to acknowledge the receipt of your note No. 198 of February 24, 1925, in regard to the diversion of water from Lake Michigan by the Sanitary District of Chicago, and to inform you that I have transmitted a copy thereof to the Secretary of War for his consideration in connection with the application of the Sanitary District for a permit increasing the diversions now authorized.

"Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) CHARLES E. HUGHES."

"Department of State,
Washington,
March 21, 1925.

"His Excellency
The Right Honorable
Sir Esme Howard, G. C. M. G., K. C. B., C. V. O.,
Ambassador of Great Britain.

"Excellency:

"Referring to my predecessor's note of February 26, 1925, informing you that he had transmitted a copy of your note No. 198 of February 24, 1925, to the Secretary of War, I have the honor to inform you that under date of March 3, 1925, a permit was issued by the Secretary of War to the Sanitary District of Chicago authorizing the temporary withdrawal from Lake Michigan of 8,500 cubic feet of water per second until December 31, 1929, subject to certain specific conditions which are set forth in the permit.

"The permit issued by the Secretary of War, a copy of which is enclosed, was made public on March 7, 1925.

"Accept, Excellency, the renewed assurance of my highest consideration.

"FRANK B. KELLOGG."

"Enclosure:
Permit."

ENCLOSURE

"PERMIT

"WHEREAS, By Section 10 of an Act of Congress, approved March 3, 1899, entitled 'An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other

purposes,' it is provided that it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same;

"And Whereas, Application has been made to the Secretary of War by The Sanitary District of Chicago, Illinois, for authority to divert an annual average of 10,000 cubic feet of water per second from Lake Michigan through the channels of said Sanitary District;

"And Whereas, In the judgment of the Secretary of War, an annual average diversion of more than 8,500 cubic feet per second should not now be permitted;

"Now Therefore, this is to certify that, upon the recommendation of the Chief of Engineers, the Secretary of War, under the provisions of the aforesaid statute, hereby authorizes the said Sanitary District of Chicago to divert from Lake Michigan, through its main drainage canal and auxiliary channels, an amount of water not to exceed an annual average of 8,500 cubic feet per second, the instantaneous maximum not to exceed 11,000 cubic feet per second, upon the following conditions:

"1. That there shall be no unreasonable interference with navigation by the work herein authorized.

"2. That if inspections or any other operations by the United States are necessary in the interests of navigation, all expenses connected therewith shall be borne by the permittee.

"3. That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of any navigable waters of the United States.

"4. That the Sanitary District of Chicago shall carry out a program of sewage treatment by artificial processes which will provide the equivalent of the complete (100%) treatment of the sewage of a human population of at least 1,200,000 before the expiration of the permit.

"5. That the Sanitary District shall pay its share of the cost of regulating or compensating works to restore the levels or compensate for the lowering of the Great Lakes system, if and when constructed, and post a guarantee in the way of a bond or certified check in the amount of $1,000,000 as an evidence of its good faith in this matter.

"6. That the Sanitary District shall submit for the approval of the Chief of Engineers and the Secretary of War plans for controlling works to prevent the discharge of the Chicago River into Lake Michigan in times of heavy storms. These works shall be constructed, in accordance with the approved plans and shall be completed and ready for operation by July 1, 1929.

"7. That the execution of the sewage treatment program and the diversion of water from Lake Michigan shall be under the supervision of the U. S. District Engineer at Chicago, and the diversion of water from Lake Michigan shall be under his direct control in times of flood on the Illinois and Des Plaines Rivers.

"8. That if, within six months after the issuance of this permit, the City of Chicago does not adopt a program for metering at least ninety per cent of its water service and provide for the execution of said program at the average rate of ten per cent per annum, thereafter, this permit may be revoked without notice.

"9. That if, in the judgment of the Chief of Engineers and the Secretary of War, sufficient progress has not been made by the end of each calendar year in the program of sewage treatment prescribed herein so as to insure full compliance with the provisions of condition 4, this permit may be revoked without notice.

"10. That this permit is revocable at the will of the Secretary of War, and is subject to such action as may be taken by Congress.

"11 That this permit, if not previously revoked or specifically extended, shall cease and be null and void on December 31, 1929.

"WITNESS my hand this 3rd day of March, 1925.

"(Signed) H. TAYLOR,
Major General,
Chief of Engineers.

"WITNESS my hand this 3rd day of March, 1925.

"JOHN W. WEEKS,
Secretary of War."

"British Embassy,
Washington, D. C.,
May 7, 1925.

"The Honourable
Frank B. Kellogg,
Secretary of State of the United States,
Washington, D. C.

"Sir:

"In your note of March 21st last you were so good as to inform me that a permit had been granted on the 3rd of that month by the Secretary of War to the Trustees of the Sanitary District of Chicago authorizing a diversion from Lake Michigan, through its main drainage canal and auxiliary channels, of an amount of water not to exceed an annual average of 8,500 cubic feet per second, the instantaneous maximum not to exceed 11,000 cubic feet per second.

"I now have the honour to inform you that before considering further the situation resulting from the decision of the Secretary of War to allow an increase of the flow through the main drainage canal and auxiliaries beyond the limit of 4,167 cubic feet per second specified in the permit of 30th June, 1910, and the consequences to navigation, power and other interests on the Great Lakes and St. Lawrence waterway system resulting from this continued diversion, against which the Government of Canada have been compelled to protest repeatedly and against which they must still protest, the Dominion Government desire to ascertain precisely the extent to which the new permit will modify the actual conditions which obtained during the year immediately preceding the 3rd March, 1925.

"Inasmuch as previous permits on the part of the Secretary of War have authorized a certain total flow in the main canal and auxiliary channels, either by direct limitation of flow or by authorization of channel capacity, the Government of Canada interpret the permit of March 3rd last as having been issued on a similar basis, with the sole exception that modification has been made in the total amount of water specified. In other words, the flow permitted under previous permits included all waters from whatever source passing Lockport, and under the permit of 3rd March, 1925, this flow is not to exceed an annual average of 8,500 cubic feet per second.

"The Government of Canada would, therefore, appreciate being advised as follows:

"First,—What has been the actual average flow of the water passing Lockport during the year ending 3rd March, 1925;

"Second,—By what amount will this average flow of water passing Lockport be immediately reduced under the terms of the permit of 3rd of March;

"Third,—By what amount will this average flow be further reduced by 31st of December, 1929, the date upon which the new permit terminates.

"I have the honour to be
with the highest consideration,
Sir,
Your most obedient,
humble servant,
(For the Ambassador)
H. G. CHILTON."

"British Embassy,
Washington, D. C.,
June 2nd, 1925.

"The Honourable,
Frank B. Kellogg,
Secretary of State of the United States,
Washington, D. C.

"Sir:

"With reference to my note No. 467 of the 7th ultimo respecting the diversion of water from Lake Michigan for use by the Sanitary District of Chicago, I have the honour to transmit to you herewith copy of a parliamentary question, together with a copy of the reply thereto, relating to this matter, which was asked in the House of Commons on May 19th.

"In view of the importance with which the Canadian Government and people regard the present situation, I have the honour to request the favour of an early reply to the enquiries contained in my note under reference.

"I have the honour to be,
with the highest consideration,
Sir,
Your most obedient,
humble servant,

ESME HOWARD."

ENCLOSURE

"CHICAGO DRAINAGE CANAL.

"(From House of Commons Debates, Tuesday, May 19th, 1925)

"On the Orders of the Day:

"Right Hon. Arthur Meighen (Leader of the Opposition):

"Mr. Speaker, I have seen a report which has given me some concern; I do not know whether it has come to the Government's attention or not. It relates to the Chicago drainage canal diversion and to the interpretation given the recent judgment of the Supreme Court of the United States by the Chicago authorities and, so far as I know, by others generally. It is well known that a limitation was placed on the diversion by the Supreme Court judgment, which limitation was believed here to be a real limitation of the very serious diversion from our waters which had up to then taken place, and the still more serious diversion in immediate prospect, it being a limitation to 8,500 cubic second feet. The interpretation which I have seen as intended to be acted upon is this; that the 8,500 cubic second feet, disastrously serious in itself, is to be applied to the drainage exit alone, that is to say, it is not to include the waters diverted by the alteration of the course of the Chicago river, which course has been changed from a flow into the lake—the natural flow—to a flow at a nearer point into the Chicago canal. It also involves an exclusion of the water taken for purposes of water supply. That is to say, the interpretation is said to be 8,500 cubic second feet for drainage alone, exclusive of 1,300 cubic second feet represented by the turning of the course of the Chicago river, and 1,200 cubic second feet more taken for the purposes of water supply. This total would be 11,000 cubic second feet, or worse than we ever understood as having been the actual practice. I would like to ask the Government if they have had any information to this effect, and if so, what steps the Government have in mind to bring

to a head, or at least, to some prospect of solution, this very dreaded and calamitous state of affairs.

"Right Hon. W. L. Mackenzie King (Prime Minister):

"The matter to which my right hon. friend has just referred came also to the attention of the government and we immediately communicated with the United States Government, placing before them the interpretation referred to and asking them whether that was the view they took of the decision and its effect. We also drew attention to other possible interpretations with a view to getting from the United States authorities an exact statement of what in their opinion was the authoritative interpretation. Up to the moment we have not received any final answer, but in view of my right hon. friend's question today I will have a further despatch sent."

"Department of State,
Washington,
June 15, 1925.

"Mr. Henry G. Chilton, C. M. G.,
Envoy Extraordinary and Minister Plenipotentiary,
Chargé d'Affaires ad interim of Great Britain.

"Sir:

"Referring further to your note No. 467 of May 7, 1925, concerning the diversion of water from Lake Michigan by the Sanitary District of Chicago, I have the honour to furnish you with the following information in reply to the inquiries made by the Canadian Government.

"First: The actual average flow of the water passing Lockport during the year ending March 3, 1925, has been 9,700 cubic feet per second.

"Second: This average flow of water passing Lockport will not be immediately reduced by any amount under the terms of the permit issued by the Secretary of War on March 3, 1925.

"Third: This average flow may be reduced by December 31, 1929, by an amount varying from 1,750 to 3,000 cubic feet per second.

"By way of explanation of the wide range over which the amount of reduction by December 31, 1929, varies, it should be stated that the amount of reduction depends upon the decrease in the sewage load on the water in the Drainage Canal. The permit prescribes that a minimum population of 1,200,000 be provided with the equivalent of 100% treatment. The program of sewage treatment plant construction contemplates the completion of plants which will give 100% treatment to a population of slightly over 1,400,000. If this program is carried to completion a larger reduction may be made in the flow than if only the requirements of the permit are carried out.

"Furthermore, when the controlling works which are required to be placed in the Chicago River or Drainage Canal to prevent reversals into Lake Michigan in times of flood are completed and in operation it may be found practicable to make a much larger reduction in the flow of water with safety to the water supply of the City of Chicago during winter season, a time when the oxygen content of the diluting water is much higher than it is during the summer season.

"It is also expected that there will be a substantial reduction in the amount of water consumed in the locality for domestic purposes as the result of a requirement of the permit of March 3, 1925, which makes it necessary for the City of Chicago to adopt and carry into execution a

program of metering its water supply. By December 31, 1929, this reduction will vary between 400 and 600 cubic feet per second.

"The net result of all these varying influences will be to make it possible to reduce the average flow by a minimum amount of 1,750 cubic feet per second, and possibly by the maximum amount of 3,000 cubic feet per second.

"To explain the apparent inconsistency between the amount of water specified in the permit (8,500 cubic feet per second measured at the intakes) and the flow at Lockport (9,700 cubic feet per second) it might be stated that the difference represents the amount of domestic water consumption by the City of Chicago which could not be authorized or included properly in a permit issued to the Sanitary District of Chicago, a separate municipality, other than to make the permit non-operative in case of failure on the part of the former agency to adopt certain measures of conservation which were specified. Condition 8 of the permit of March 3, 1925, looks to a substantial reduction of this portion of the flow in the Chicago Drainage Canal, at the same time condition 4 makes possible a reduction in the amount of water used for dilution of sewage.

"Accept, Sir, the renewed assurances of my high consideration.

"For the Secretary of State:

"JOSEPH C. GREW."

"British Embassy,
Manchester, Mass.
September 15th, 1925.

"The Honourable
Frank B. Kellogg,
Secretary of State of the United States,
Washington, D. C.

"Sir,

"At the request of the Governor General of Canada, I have the honour to inform you that the Government of Canada has carefully considered your note of June the 15th last on the subject of the interpretation of the permit granted by the United States Secretary of War on the 3rd of March, 1925, for the diversion of water from Lake Michigan by the Sanitary District of Chicago.

"The Government of Canada is constrained to point out that despite repeated protests against the diversion of water from Lake Michigan, the above-mentioned permit of March 3rd, 1925, authorizes a diversion in amount over twice that stipulated in any previous permits.

"In this connection I have the honour to state that the Canadian Government also views with apprehension the interpretation which has been placed upon the permit in your note under reference. As set forth in the note which I had the honour to address to you on this subject on May the 7th last, the Government of Canada believed that the present permit, as in the case of previous permits, would limit the amount of the total diversion and be applicable to all waters passing Lockport. The interpretation of the permit of the 3rd March, 1925, as contained in your note under reference, would indicate, however, that the point of measurement is changed from Lockport to the intake works of the Sanitary District and through such change the permit recognizes an actual diversion much in excess of the stipulated amount of 8,500 second feet set forth in the

permit. In other words, it is clearly stated that the permit does not embrace water diverted by the City of Chicago's pumping stations which at the present rate of pumping amounts to some 1,200 second feet thereby increasing the authorized diversion from 8,500 second feet to 9,700 second feet.

"In addition, it would appear that if measurement be made at the intake from Lake Michigan the result would be to exclude from the operations of the permit the intercepted flow of the Chicago and Little Calumet Rivers, which varies in amount but is equal, it is understood, to an annual average of about 1,300 second feet. In these circumstances it would appear that the effect of the permit of the 3rd March would not merely authorize an average annual diversion of 9,700 second feet as above noted, but would recognize and permit of a total diversion passing Lockport of 11,000 second feet.

"While it is understood from your note of June the 15th that the Government of the United States anticipates that at the expiry of a five year period the annual diversion may be reduced between 1,750 and 3,000 second feet, this is far from reassuring since even if the larger suggested reduction becomes effective, the diversion at the beginning of 1930 will still be almost double that authorized by the Secretary of War of the United States when action for an injunction against the Sanitary District of Chicago was commenced in 1908.

"Furthermore, the Government of Canada would point out that works dependent on the levels and flow of the Great Lakes System cannot be confidently projected or economically carried out if diversions from the watershed are permitted without mutual assent thereto. Moreover, in this connection the continued and increasing impairment of the natural levels and discharge of the Great Lakes System, due to the diversion from Lake Michigan, raises

the question as to the extent to which the Canadian Government would be warranted in giving consideration to any further improvements therein until there is an assurance of definite curtailment of such diversion.

"In connection with this matter the attention of the Canadian Government has been called to a permit dated the 30th April, 1925, from the United States Acting Secretary of War, authorizing the Sanitary District of Chicago to carry out certain dredging work in the Calumet river system, which it is understood will involve an expenditure of $1,500,000 and enable the Calumet-Sag Channel to by-pass 2000 second feet into the main drainage canal. If the report of this large expenditure is correct, it would appear to indicate that the Sanitary District is proceeding in expectation of continued diversion.

"The Canadian Government is therefore compelled to conclude that despite repeated protests no immediate or definite reduction has been provided and, furthermore, that if the above interpretation of the permit of 3rd March, 1925, is confirmed, the effect will actually be to authorize a greater diversion than is now being made.

"I accordingly have the honour to request that you will be so good as to communicate the above consideration to the competent authorities of the United States Government and to enquire whether it is not their intention to take measures to ensure immediate as well as more definite and more substantial future curtailment in the amount of water which is being diverted with such serious results from the Great Lakes and St. Lawrence System.

"I have the honour to be,
with the highest consideration,
Sir,
Your most obedient,
humble servant,
(Signed) H. G. CHILTON."

"British Embassy,
Washington, D. C.
October 5th, 1925.

"The Honourable
Frank B. Kellogg,
Secretary of State of the United States,
Washington, D. C.

"Sir:

"With reference to my note No. 813 of September 15th last, I have the honour to inform you that the word 'reported' used in the second paragraph thereof should be amended to read 'repeated.' It is regretted that this error should have occurred.

"I have the honour to be,
with the highest consideration,
Sir,
Your most obedient,
humble servant,
(Signed) H. G. CHILTON."

"British Embassy,
Washington, D. C.
November 5th, 1925.

"The Honourable
Frank B. Kellogg,
Secretary of State of the United States,
Washington, D. C.

"Sir:

"I have the honour to draw your attention to a clerical error in paragraph 7 of my note No. 813 of the 15th ultimo, on the subject of the diversion of water from Lake Michigan by the Sanitary District of Chicago. In that paragraph

the sum of $1,500,00 quoted in the passage reading 'involve an expenditure of' is erroneous, and should read $1,500,000.

"I have the honour to request that you will be so good as to correct the error in the original note from this Embassy the occurrence of which is regretted.

"I have the honour to be,
with the highest consideration,
Sir,
Your most obedient,
humble servant,
(Signed) ESME HOWARD."

"November 24, 1925.

"His Excellency
The Right Honorable
Sir Esme Howard, G. C. M. G., K. C. B., C. V. O.,
Ambassador of Great Britain.

"Excellency:

"Referring further to your Embassy's note No. 813 of September 15, 1925, bringing to my attention certain remarks and inquiries of the Canadian Government in regard to the diversion of water from Lake Michigan by the Sanitary District of Chicago, I take pleasure in submitting the following statements:

"The Sanitary District of Chicago to which the permit of March 3, 1925, was issued by the Secretary of War, is a municipal corporation separate and distinct from the City of Chicago. The operations of the Sanitary District are conducted under direct authority of the legislature of the State of Illinois without reference to the operations of the municipal government of the City of Chicago. Diver-

sion of water for domestic consumption in the City of Chicago being purely a function of the municipal government of the City, it is considered that the authority granted the Sanitary District could not be made to apply to or include this other diversion as well. The case before the Secretary of War for action involved the granting of a permit for diversion of water for sanitary purposes only, and the instrument of authority was worded accordingly.

"On the other hand, it seemed to the Secretary of War that the diversion of water for domestic consumption by the City of Chicago was larger than it should be, and that the amount wasted was not a negligible portion of the gross diversion. He also considered that this excessive diversion for domestic purposes made the cost of sewage treatment plant construction and operation unnecessarily high and consequently added to the length of the construction period and the difficulties of financing. For these reasons the Secretary of War took cognizance of the diversion for which the City of Chicago is responsible, in a restrictive way, rather than by permissive means, and included a condition in the permit making the instrument voidable in case of City of Chicago fails to take specified steps looking to a curtailment in the amount of water diverted for domestic purposes.

"In the judgment of the Secretary of War the average diversion which should be authorized for sanitary purposes under the conditions known to exist should be not less than 8,500 cubic feet per second. The safety of the lives and health of citizens of the locality cannot be disregarded, and until the conditions of the permit of March 3, 1925, have been complied with no substantial reduction in the amount of diversion could be made without endangering health if not life.

"The expression 'measured at the intakes,' used to designate the places where the total actual flow should not exceed that specified in the permit, is hypothetical as it is impracticable to measure the diversion at the numerous intakes with accuracy. For this reason, the practical enforcement of the limitation placed upon the diversion will be carried out at Lockport. Measurements taken there will determine the gross diversion, sanitary and domestic, and, as accurate information is available in regard to the amount of water pumped by the City of Chicago for domestic purposes, the sanitary diversion may be computed by subtracting the domestic diversion from the gross flow at Lockport.

"The term 'diversion' as used in the permit is construed to include the discharge of the Chicago and Calumet Rivers. In view of the methods employed in computing the amount of the diversion the discharge of these streams will be included within the 8,500 cubic feet per second authorized by the permit of March 3, 1925.

"With reference to the permit issued on April 29, 1925, by the Acting Secretary of War, authorizing the dredging of the Little Calumet River, attention is invited to the following special condition attached thereto: 'That this permit does not authorize and should not be construed as authorizing or allowing any increase whatever in the diversion of water from Lake Michigan authorized by permit issued to the Sanitary District of Chicago by the Secretary of War March 3, 1925, nor as modifying in any respect the conditions of that permit.'

"The deepening of the Little Calumet River will give the Sanitary District of Chicago better control over river reversals, for it will increase the discharge capacity of the system at intermediate stages and insure protection of the water supply during these critical periods. Since the

total sanitary diversion is limited to an average of 8,500 cubic feet per second and an instantaneous maximum of 11,000 cubic feet per second, if the Sanitary District chooses to pass 2,000 cubic feet per second through the Calumet River and Sag Channel it will be required to reduce the amount diverted through its other intakes to keep within the limitations placed by the permit of March 3, 1925.

"The Canadian Government is correct in concluding that no immediate reduction in diversions has been provided, but its conclusion that no definite reduction is assured and that the effect of the permits will actually be to authorize a greater diversion than is now being made cannot be confirmed. The *gross flow* at Lockport will not exceed an average of 9,700 cubic feet per second, and by the time the permit of March 3, 1925, has expired the gross flow may be reduced to 8,000 cubic feet per second and probably to 6,700 cubic feet per second. The sewage treatment program of the Sanitary District has been arranged, so as to make it possible to effect a reduction to a gross flow of 4,167 cubic feet per second by the year 1935 or before.

"I shall be grateful if you will cause the foregoing statements to be brought to the attention of the Canadian Government.

"Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) FRANK B. KELLOGG."